

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3264 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

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Dr.Jhaver Virjibhai Pandav

vs.

Rekhaben Jhaverbhai Pandav

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Appearance :

Mr.P.N.Bavishi for the petitioner.

Mr.Bhargav Bhatt for the respondents.

CORAM : S.D.PANDIT,J.

Date of decision : 26-9-1996

ORAL JUDGMENT

1. The original opponent in Misc.Criminal Application No.1395/93 on the file of Chief Judicial Magistrate,Bhavnagar has preferred present application seeking quashing of the said proceeding of Misc.Criminal Application No.1395/93 on the file of Chief Judicial Magistrate,Bhavnagar.

2. The claim of the petitioner before me that this Criminal Misc.ApplicationNo.1395 of 1993 filed under the provisions of Section 125 of the Criminal Procedure Code is not tenable in law in view of the fact that the original applicant-respondent No.1 Rekhaben Jhaverbhai Pandav is working as a nurse and drawing a pay of Rs.5,000/- per month. He has further averred that inspite of the clear averment made by the original applicant-respondent No.2 in the petition itself that she is working as a nurse and getting pay, the learned Chief Judicial Magistrate has not only entertained the said application, but went on passing an interim order of interim maintenance in her favour. According to him, the relation between him and respondent No.1 are strained and various proceedings are pending between the parties and only in order to harass the petitioner, the said application under Section 125 of Criminal Procedure Code is filed. He, therefore, seeks the quashing of the said proceeding.

3. The respondent No.1 has clearly averred in her petition in para : 9 that she is working as a nurse in the Government Hospital of Bhavnagar. The original petitioner has not specifically mentioned as what are her earnings in the said application, but the petitioner before me i.e.original opponent-husband has produced the certificate issued by the Suprintendent of said hospital where she is working as a nurse and the said certificate issued on 2-6-1995 clearly mentions that she is getting Rs.3,735/- net per month as salary.Thus,as per the said certificate, after all deduction,she is getting Rs.3,735/- net per month.Therefore, in view of the clear averment made by the original applicant-respondent No.1 in her application itself that she is working as a nurse and in view of the pay certificate issued by the Suprintendent of the said hospital, it is quite obvious that the respondent No.1 was not at all justified in filing application u/S.125 of the Cr.P.C. The claim under section 125 is to be considered and allowed in order to help indigent person and a person who has no means to maintain oneself. But the original applicant-respondent No.1 could not be said to be an indigent person or a person without any means to maintain herself. Therefore, in the circumstances, the original application filed bythe respondent No.1 itself is not tenable in law. It would be a total misuse of process of law to continue the said proceeding taken bythe respondent No.1 under Section 125 of Cr.P.C. It seems that the said proceeding is taken only in order to harass the petitioner who has to come

to attend the court from Bombay. Therefore, in the circumstances, the present application will have to be allowed and the said criminal application under Section 125 of the Code of Criminal Procedure bearing No.1395/93 pending on the file of Chief Judicial Magistrate, Bhavnagar will have to be quashed and set aside. Similarly the interim order of interim maintenance passed by the said Chief Judicial Magistrate, Bhavnagar, will have to be quashed and set aside. However, it is made quite clear that the amount paid by the petitioner pursuant to the said interim order in favour of the respondent No.1 should not be recovered from her.

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